

WILMERHALE

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Wayne L. Stoner

**VIA ECF**

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The Honorable Debra Freeman  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *Harvey H. Jay v. Spectrum Brands Holdings, Inc., et al.*, No. 1:13-cv-8137 (LTS) (DCF)  
Request for Sur-Reply

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Dear Judge Freeman:

In response to plaintiff Jay's August 28, 2015 letter to the Court, Spectrum opposes Jay's request to file a surreply second declaration that contradicts his sworn deposition testimony and does not prove what his counsel asserts.

Jay asserts in paragraph 4 of his proposed second declaration that "All references that I made to 'studies' and 'tables' in my deposition testimony referred to studies and tables which I learned about through publicly-available documents" (which alleged documents he does not identify or supply). That is not what Jay testified in his deposition. Jay testified expressly that the "studies" to which he was referring, including with "tables" (Stoner Decl., Ex. C, Docket 101-3, pp. 191-193), were "the Spectrum studies that they submitted to the FDA". (*Id.*, at 191: 12-23).

Jay counsel asserts in his letter that "The Declaration clarifies that none of the information referenced by Dr. Jay in his deposition testimony was obtained from documents marked "Highly Confidential" by Defendants." The Declaration does no such thing and does not even assert that, which contradicts Jay counsel's own admission that he shared Defendants' Highly Confidential information with Jay to prepare him for his deposition. (Stoner Decl., Docket 101-4 and 101-5, Exs. D and E).

The present submissions of Jay and his counsel even further compounds their bad faith in intentionally violating a Court Order and then dishonestly trying to avoid the consequences.

Respectfully submitted,

/s/ Wayne L. Stoner

Wayne L. Stoner

cc: Counsel of Record (via ECF)